

lead one to conclude that many, if not most, of the calls were intrastate. The Commission found that it was impossible to separate the interstate and intrastate provision of BellSouth's voice mail service to permit effectuation of the Georgia order only for the intrastate voice mail.^{68/}

As in the instances outlined above, preemption is proper in the area of CMRS-LEC interconnection rates because CMRS communications meet the two-part test outlined by *Louisiana*. First, individual state regulation of LEC interconnection rates will thwart the strong federal policy in fostering competition in telecommunications (particularly in the case of breaking the last remaining monopoly, the local telephone exchange) and Congress' specific intent to establish a seamless, national wireless communications network. Allowing individual states to regulate LEC interconnection rates would result in a myriad of different rate structures and undermine the development of a uniform federal policy in favor of competition and a nationwide telecommunications system.

Second, LEC-CMRS preemption fits squarely within the "impossibility/inseverability" exception set forth in *Louisiana*. It is not possible to identify or tease out interstate from intrastate calls within the CMRS context. CMRS calls are inherently interstate because CMRS is part of an interstate network of networks. The inseverability argument holds special force when applied to the large service areas utilized by PCS. Because the service areas of many CMRS providers will span several states, it is impossible to separate interstate and intrastate calls. Sprint Spectrum plans to deploy wireless service in some 20-25 major

^{68/} The Commission found it was technically infeasible for BellSouth to identify the origin of each call to the voice mail service so as to permit the blocking of only intrastate calls. Additionally, it was not economically feasible to market interstate and intrastate enhanced services separately. And the Commission was unwilling to assume a certain percentage, assuredly high, was intra-state. *BellSouth Corp.*, 70 R.R.2d at 588.

trading areas, virtually all of which serve multiple states, by the end of 1996. Similarly, APC currently provides commercial CMRS service to the District of Columbia, Virginia and Maryland in the Washington/Baltimore major trading area. Because "[t]he key to jurisdiction is the nature of the communication itself rather than the physical location of the technology,"^{69/} it is appropriate to focus on the nature of wireless telecommunications.

The impossibility of separating interstate from intrastate wireless communication for regulatory purposes is illustrated by the following example. A PCS subscriber, who has a phone registered with a "202" area code, is travelling in Northern Virginia, just across the Potomac River, and places a PCS call first to a friend in Maryland and then to an office in Virginia. Both calls are routed through the nearest tower, which is in Maryland. The CMRS provider knows the caller has a "202" telephone number and that the call entered its network in Maryland. Thus, it may assume the first call was intrastate, which it clearly is not, and the second call was interstate, although it clearly is not. This example is neither convoluted nor contrived. Similar calling patterns occur thousands of times a day in Washington, Boston, New York, Philadelphia, Kansas City, Indianapolis and a host of other communities that are comprised of service areas crossing more than one state. The example also demonstrates that the inseparability of wireless traffic will only increase as more PCS systems are constructed.

Because it is impossible to determine whether a call routed through a LEC is intrastate or interstate, the Commission must assert jurisdiction over all interconnection rates

^{69/} *BellSouth Corp.*, 70 R.R.2d at 587.

for CMRS calls.^{70/} Allowing state regulation of LECs' rates for intrastate communication would require a parsing out of intrastate and interstate calls and result in an unwarranted reliance on assumptions regarding the nature of each call. Because it is impossible to reasonably assume the location of originating CMRS traffic, the reliance on assumptions in this context would be arbitrary and capricious at best.^{71/}

Given Congress' intent to create a uniform national network for CMRS and the impossibility of separating interstate and intrastate calls, CMRS service meets the two-part test set forth in *Louisiana*. Accordingly, jurisdiction over regulation of LEC interconnection rates properly lies with the Commission.

c. Only Uniform Federal Jurisdiction Can Accomplish Federal Policies In Favor Of Competition. Sprint Spectrum and APC urge the Commission to exercise its authority to establish a uniform, federal policy for CMRS interconnection rates. The *Notice* offers several alternatives for implementing a federal policy. These alternatives include (a) allowing states to voluntarily accept federal guidelines for interconnection matters; (b) adopting a mandatory federal policy which consists of general policy parameters while allowing states a wide range of discretion in implementing specific elements of these arrangements; and (c) adopting specific, federal requirements for interstate and intrastate

^{70/} "The Commission has jurisdiction over, and regulates charges for, the local network when it is used in conjunction with the origination and termination of interstate calls." *BellSouth Corp.*, 70 R.R.2d at 587.

^{71/} Moreover, if the Commission fails to assert its jurisdiction over LEC-CMRS interconnection rates, States may well use the regulation of these rates to assert jurisdiction over CMRS providers in direct contravention to the Budget Act. Connecticut, for example, has stated that if a CMRS provider wishes to operate under a bill and keep system then it would have to give assent to have its rates regulated by the state, despite the explicit preemption of state rate regulation by the Budget Act and the FCC's rejection of Connecticut's petition to assert continued jurisdiction over rates.

LEC-CMRS interconnection arrangements. The third alternative is the only effective way to achieve the policy objectives outlined in the *Notice*.

The Commission's adoption of a policy which enables states to accept bill and keep on a voluntary basis could ultimately prove more harmful than refraining from addressing the interconnection issue at all. Adopting a voluntary policy would give federal policymakers the false perception that the interconnection problem was resolved when in fact very little would have been accomplished. Although some states may tackle the interconnection issue, the adoption of 50 different rate policies would result in a patchwork of different regulations governing CMRS instead of a seamless, national network. It also is highly doubtful that any critical mass of state commissions could act quickly enough to have effective regulations in place by the time broad-based PCS roll-out begins this year.

Adopting a mandatory federal policy framework but leaving implementation to the states would suffer from similar flaws. Providing the states with wide latitude in following very broad policies such as the requirement of mutual compensation would not effectively achieve the Commission's goal of creating a competitive marketplace. For example, some current and inadequate interconnection agreements would meet the general standard of mutual compensation even though they require CMRS-LEC payments that stifle competition. These agreements would not foster the Commission's goal of promoting competition and ultimately maximizing the benefits of CMRS to the American consumer.

Only the adoption of specific, mandatory interconnection rates will provide the type of uniform, national, wireless network Congress envisioned, serve the federal policy of telecommunications competition, and permit the growth of CMRS to its full potential. Sprint Spectrum and APC urge the Commission to promulgate specific federal requirements for all LEC-CMRS interconnection arrangements.

III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC

At the outset, the *Notice* is wrong in assuming that most CMRS providers will depend upon LECs to deliver the CMRS provider's interstate traffic to the point of presence of an interexchange carrier ("IXC"). APC, for example, so far has direct connections to two IXCs. We expect that direct connections will be used frequently and may be the rule rather than the exception. On the other hand, CMRS providers typically receive traffic routed through the LEC for terminating interstate traffic and outbound calls to 800 numbers.

The primary safeguard needed in this area is to permit CMRS providers to recover access charges from IXCs and LECs at least on an equal basis as other co-carriers (namely, neighboring LECs). This goal could be implemented most efficiently by permitting (or requiring) CMRS providers to file tariffs. Because CMRS providers do not have market power in providing telephone exchange access, the Commission could forbear from regulating the rates in these tariffs.^{72/} Accordingly, CMRS providers' filing of tariffs would not impose a burden on the Commission.

^{72/} The Commission has ample basis to conclude that access rates charged by a CMRS provider will be just and reasonable, consistent with Commission practice with tariffs filed by other nondominant carriers. *See generally* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 F.C.C. Rcd. 1411, ¶ 137 (1994) ("the record supports a finding that all CMRS service providers, other than cellular licensees, currently lack market power").

* * *

For these reasons, we urge the Commission to adopt a bill-and-keep system for interim CMRS interconnection, to complement that sound policy with a parallel policy in favor of shared costs for dedicated interconnection facilities, and to act quickly.

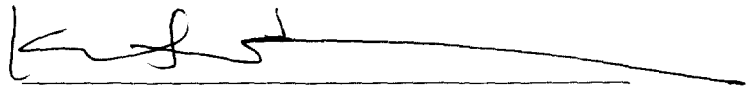
Respectfully submitted,

SPRINT SPECTRUM

**AMERICAN PERSONAL
COMMUNICATIONS**

JONATHAN M. CHAMBERS
VICE PRESIDENT OF PUBLIC AFFAIRS
SPRINT SPECTRUM, L.P.
1801 K Street, N.W., Suite M-112
Washington, D.C. 20036
(202) 835-3617

ANNE P. SCHELLE
VICE PRESIDENT, EXTERNAL AFFAIRS
AMERICAN PCS, L.P.
6901 Rockledge Drive, Suite 600
Bethesda, Maryland 20817
(301) 214-9200



JONATHAN D. BLAKE
KURT A. WIMMER
GERARD J. WALDRON
JOHN F. DUFFY
DONNA M. EPPS

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-6000

Their Attorneys

March 4, 1996